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Attorneys for Defendant R2 Solutions LLC

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ALLEGiant TRAVEL COMPANY,

Plaintiff,

v.

R2 SOLUTIONS LLC,

Defendant.

Case No. 2:22-cv-00828-CDS-BNW

**JOINT STIPULATION TO AMEND
SCHEDULING ORDER TO CANCEL
CLAIM CONSTRUCTION
PROCEEDINGS**

JOINT STIPULATION TO AMEND SCHEDULING
ORDER TO CANCEL CLAIM CONSTRUCTION
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CASE NO: 2:22-CV-00828-CDS-BNW

1 Plaintiff Allegiant Travel Company (“Allegiant”) and Defendant R2 Solutions, LLC (“R2”)
2 jointly submit this stipulation to amend the scheduling order to cancel claim construction proceedings.

3 WHEREAS, Allegiant filed this case seeking a declaratory judgment of non-infringement of
4 seven patents owned by R2 (ECF 1);

5 WHEREAS, R2 filed a motion to dismiss asserting that (1) there is no case or controversy
6 between the parties; (2) even if there is a case or controversy, the Court should decline to exercise
7 jurisdiction under the Declaratory Judgment Act; and (3) the Court lacks personal jurisdiction over R2
8 (ECF 29), and Allegiant filed its opposition to this motion;

9 WHEREAS, the Court has not yet ruled on R2’s motion to dismiss;

10 WHEREAS, the Court’s scheduling order includes claim construction-related deadlines, including
11 deadlines for the parties to exchange terms for construction, exchange proposed constructions, and file a
12 joint claim construction statement and claim construction briefs (ECF 39 at 4-5);

13 WHEREAS, Allegiant served its non-infringement contentions on September 6, 2022;

14 WHEREAS, R2 served its response to Allegiant’s non-infringement contentions on October 25,
15 2022, in which R2 stated its position that Allegiant is not entitled to a declaratory judgment of non-
16 infringement because there is no justiciable controversy, the Court lacks personal jurisdiction over R2,
17 and, even if the Court has subject-matter jurisdiction, it should not exercise it;

18 WHEREAS, R2 also stated in its non-infringement contentions that it declined to contravene any
19 other statements in Allegiant’s non-infringement contentions or to assert a claim for patent infringement
20 to avoid creating the case or controversy that R2 maintains does not exist;

21 WHEREAS, R2 filed a Motion to Modify Local Patent Rules to Cancel Claim Construction
22 Proceedings and to Amend the Scheduling Order Accordingly (“Motion to Modify Local Patent Rules”)
23 asserting that claim construction is unnecessary in view of R2 not asserting a claim for infringement
24 (ECF 60);

25 WHEREAS, R2 stated in its Reply in Support of its Motion to Modify Local Patent Rules
26 (“Reply”) that R2 “is not raising, and will not raise, infringement issues in this case” and “will not assert
27 infringement here” (ECF 63 at 1);

1 WHEREAS, R2 maintains its position that (1) the Court lacks subject-matter jurisdiction because
 2 there is no case or controversy between the parties; (2) even if there is a case or controversy, the Court
 3 should decline to exercise jurisdiction under the Declaratory Judgment Act; and (3) the Court lacks
 4 personal jurisdiction over R2;

5 WHEREAS, in view of R2's representations in its Reply that R2 declines to assert infringement
 6 in this case even upon denial of R2's motion to dismiss and that R2 will only oppose summary judgment
 7 of non-infringement on the grounds asserted in R2's motion to dismiss and its response to Allegiant's
 8 non-infringement contentions, Allegiant no longer opposes modifying the case schedule to cancel claim
 9 construction proceedings. As set forth in Allegiant's opposition to R2's motion to dismiss, it is
 10 Allegiant's position that this Court has subject matter jurisdiction and personal jurisdiction as a result of
 11 R2's actions that prompted Allegiant's filing of the complaint for declaratory judgment relief, said
 12 actions causing a case or controversy for this Court to resolve. Allegiant agrees that it is not necessary for
 13 the Court to evaluate claim construction in order for the Court to issue declaratory judgment of non-
 14 infringement. In the motion for summary judgment of non-infringement that Allegiant will file,
 15 Allegiant will rely upon R2's statements in its Reply and this stipulation.

16 IT IS HEREBY AGREED AND STIPULATED by and between Allegiant and R2 that the Court
 17 enter an order removing the following deadlines from the scheduling order;

- 18 • Submit Joint Claim Construction and Prehearing Statement
- 19 • Opening Claim Construction Brief
- 20 • Response to Claim Construction Brief
- 21 • Reply Claim Construction Brief and Matter Submitted to Court for Hearing
- 22 • Claim Construction Tutorials, Hearing, and Order from the Court

23 IT IS FURTHER HEREBY AGREED AND STIPULATED by and between Allegiant and R2
 24 that R2's Motion to Modify Local Patent Rules to Cancel Claim Construction Proceedings and to Amend
 25 the Scheduling Order is withdrawn. Should the Court wish to discuss this stipulation with counsel or
 26 case status, the parties remain available for the hearing scheduled for December 19, 2022, but otherwise
 27 respectfully submit that the hearing can be canceled.

1 **IT IS SO STIPULATED.**

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8 Dated this 12th day of December, 2022.

9 JONES DAY

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 Dated this 12th day of December, 2022.

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Attorneys for Defendant
 R2 Solutions LLC

ORDER

 IT IS ORDERED that ECF No. 64 is GRANTED.

 IT IS FURTHER ORDERED that ECF No. 60 is withdrawn, per
 the parties' request.

 IT IS FURTHER ORDERED that the hearing set for
 12/19/2022 is VACATED.

JOINT STIPULATION TO AMEND SCHEDULING
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CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2022, I caused a true and correct copy of the foregoing
JOINT STIPULATION TO AMEND SCHEDULING ORDER TO CANCEL CLAIM
CONSTRUCTION PROCEEDINGS to be submitted electronically for filing and service with the United
States District Court for the District of Nevada via the Electronic Filing System to the following:

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